

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5266 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

SURYAKANT DALSUKHJI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR. H.L. JANI, AGP for Respondent No. 1
MR. B.T. RAO, Addl. Central Govt. Standing Counsel
for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 10/09/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner detenu has challenged the order of detention dated 17.6.1998 passed by respondent No. 2, District Magistrate, Patan in exercise of powers conferred by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act' on being

satisfied that the activities of the petitioner are prejudicial to the maintenance of supply of commodities essential to the community.

It is contended by Mr. Prajapati, learned counsel for the petitioner that the detenue made a representation dated 30.6.1998 addressed to the Hon'ble Minister, Civil Supply Consumer Affairs and Public Distribution, New Delhi but the same has not been decided. It is also submitted that the representation dated 17.7.1998 sent through the State Government has also not yet been decided by the Central Government. So far as the representation dated 30.6.1998 is concerned, it is submitted that the same was sent by speed post. Along with the additional affidavit, a letter of Deputy Manager, Speed Post, Postal Department, Ahmedabad dated 30.7.1998 has been produced wherein it is certified that article number 6708 addressed to the Hon'ble Minister, Civil Supply Consumer Affairs & Public Distribution was delivered in the said office on 1.7.1998. In order to verify the correctness of the same this court by order dated 2.9.1998 directed the Deputy Manager, Speed Post, Postal Department, Ahmedabad, to be present in court along with the records. Mr. P.S. Panchal, Deputy Manager, is present in the court along with the record. The record clearly indicates that article which contains the representation to the Hon'ble Minister was received in the Ministry on 1.7.1998. Against the relevant entry, there is seal of the Ministry and the initial of the person concerned indicating date 1.7.1998. At this stage Mr. B.T. Rao prays for some time to enquire from the Ministry as to how the said representation has been dealt with. Mr. Prajapati, learned counsel for the petitioner submits that no useful purpose would be served in adjourning the matter as the representation sent to the Central Government on 17.7.1998 has also not been decided. He has invited my attention to the affidavit filed by Mr. K.V.S. Rao, Under Secretary, Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi. It is stated by Mr. Rao that only representation dated 17.7.1998 made by the detenu was received on 27.7.1998 through the State Government. After considering the contents of the representation dated 17.7.1998 it was felt necessary that parawise comments of the State Government on the representation may be called for. It is further submitted that parawise comments of the representation are still awaited. Mr. P.D. Shah, Under Secretary, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed affidavit. It is stated that the detenu has submitted a representation before the Advisory Board on 17.7.1998. The Advisory Board considered the said representation and

sent it to the State Government along with its report which was received in the Ministry on 23.7.1998. A decision thereon was taken by the Hon'ble Minister on 28.7.1998. The State Government is silent with respect to the comments sought by the Central Government on the representation dated 17.7.1998. The question is whether the Central Government asked for the comments of the State Government or not? If asked whether such communication was received by the State Government or not? It is not necessary to go into all these questions as the fact remains that the representation dated 17.7.1998 has yet not been decided. In view of this, I have no hesitation in holding that the Constitutional right of the petitioner to make representation as provided under Article 22(5) of the Constitution has been violated. The Constitutional mandate commands the concerned officer to whom the detenue forwarded the representation questioning the correctness of the detention order clamped upon him and requesting for his release to consider the representation within a reasonable time and expeditiously as possible. This is the settled position of law. A reference may be made to the decision of the apex court in the case of R.D. BORADE VS. V.K. SARAF reported in AIR 1989 SC 1861.

Before parting with this Special Civil Application it would be necessary to impress upon the concerned authority to be more vigilant in detention matters. In such matters a proper procedure should be evolved so that the courts are not compelled to quash the detention orders on technical grounds. The Secretary, Food, Civil Supplies & Consumer Affairs, Government of India is directed to hold an enquiry into the matter as to how the representation dated 30.6.1998 received in the Ministry on 1.7.1998 has been dealt with. The responsibility of the person concerned be fixed and proper departmental enquiry be initiated under intimation to this court.

In view of the aforesaid this Special Civil Application is allowed and the order of detention dated 17.6.1998 is quashed and set aside. The petitioner shall be set at liberty forthwith if not required in any other case. Rule made absolute.

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